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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4th DAY OF JUNE 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION No.1116/1992.

BETWEEN :-

Sri.Veerappa,  
s/o Mallikarjunappa  
Goveshawar, Major,  
No.15, Deenabandu Colony,  
Karwar Road,  
Hubli: Dharwad Dist.

U/S  
...Petitioner.

( By Sri.B.V.Katageri &  
Sri.S.G.Angadi, Advocates. )

A N D :

The Assistant Commercial  
Tax Officer, Sales Tax,  
Checkpoint, Yermarus Road,  
Shaktinagar,  
RAICHUR.

...Respondent.

( By Sri.K.M.Shivayogiswamy, Addl.G.A. )

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This writ petition filed praying to quash the  
impugned assessment order dated 30-12-1991 in respect  
of the vehicle No.MEZ-6425 against the petitioner vide  
Annexure-C; etc,

This writ petition coming on for hearing this day,  
the court made the following order :

...2/-

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O R D E R

In this petition for a certiorari the petitioner calls in question an order dated 30th of December, 1991, passed by the Respondent Assessing Authority determining a sum of Rs.51,075/- towards tax and penalty u/s. 28AA of the Karnataka Sales Tax Act.

2. The petitioner is the owner of a goods vehicle bearing registration No.MEZ-6425. The said vehicle checked at the sales tax check-post, Yermarus Road, Shaktinagar, Raichur on 7th August 1991 carrying on 600 tins of Vanaspati, to be delivered to Gajanana Traders at Corlim, in Goa. On an application made by the driver of the vehicle the Entry check Post Officer Sales Tax, Check Post, issued a transit pass bearing No.032401, dated 7-8-1991 in his favour, the duplicate and triplicate copies where of were to be surrendered by him on or before the 11 p.m. of 8th of August, 1991, before the Exit Check Post Officer. Since the triplicate copy of the transit pass issued to the driver was not received by the entry check post Officer, from the Exit Check Post Officer, a notice u/s.28AA(4) of the Act, was issued to the petitioner to show cause

why an amount of Rs.17,025/- towards Sales-tax and a penalty of Rs.34,050/- as per Sec.28AA(4) and 28AA(5) of the Act be not recovered from him. The petitioner appears to have acknowledged the notice and sent a reply in which it was inter alia stated that the vehicle in question was not covered by a Goa permit and that the goods were carried only upto Gadag for onward transshipment to Goa at the consignors risk. It is also pointed out that the goods were despatched through M/s.Ganesh Transport Hyderabad by the consignor M/s. Tungabhadra Industries Ltd., Secunderabad. Proceedings for recovery of tax and penalty etc could therefore according to the petitioner be initiated only against the Transport Company or the consignor. The Assessing Authority has by his order dated 30th of December, 1995, rejected the defence set-up by the petitioner and levied a penalty of Rs.34,050/- besides a tax of Rs.17,025/-. Aggrieved, the petitioner has filed the present writ petition as already pointed out earlier.

3. Counsel for the petitioner argued that the petitioner was no doubt the true and the registered owner of the vehicle but in terms of explanation to Sec.28AA,

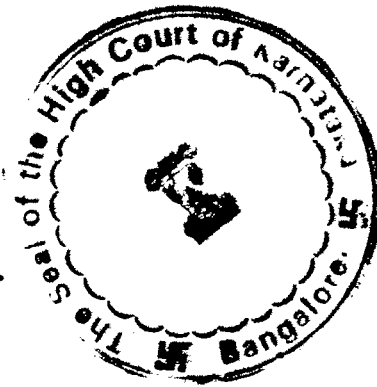
in cases where the vehicle is hired for transportation of goods by some other person, the hirer of the vehicle is for purposes of said Section to be deemed to be the owner of the vehicle . She contended that in the instant case, the vehicle in question had been hired by the Transport Company through whom the goods in question had been loaded and despatched by the consignor and therefore for purposes of Sec.28AA, it was either the transport Company or the consignor of the goods which was to be treated as the owner of the vehicle liable for payment of tax as also the penalty amount.

4. Mr K.M.Shivayogiswamy, Addl.Govt.Advocate appearing for the other side however contended that the transport company appeared only to be a commission agent and could not be said to be the hirer of the vehicle. He urged that the liability to pay the tax and the penalty, could be fastened either on the owner of the vehicle or the consignor of the goods, depending upon the evidence which the petitioner produces in support of the case that the vehicle had actually been hired out either to the company or to the consignor. He submitted that since no material had been produced before the Assessing Authority, there was no discussion on that aspect of the matter, in the impugned order.

5. The explanation offered to Section 28AA makes it fairly evident that for purposes of the said provision, the hirer of the vehicle is deemed to be the owner of the vehicle in cases where the vehicle is hired for transportation and goods by some persons other than the real owner. The reply submitted by the petitioner, although not very happily worded, did raise an objection to the levy of tax or penalty being levied against the petitioner. The reply stated that the goods had been loaded through Ganesh Transport Company, and that either the Company or the Consignor Industrial unit was responsible for any violation of Sec. 28AA. In the circumstances therefore the Assessing Authority ought to have examined that aspect of the matter and specifically dealt with the question whether or not the vehicle had been hired for transportation of goods by some other person and if so who that person was and what was the extent of his liability for payment of the tax amount or the penalty leviable under the Act. The order under challenge does not however satisfactorily deal with the said question. The order proceeds on the assumption that the owner of the vehicle would mean the registered owner alone and ignores

totally the effect of the explanation to Sec.28AA.  
In the circumstances I find it difficult to support the said order. This petition accordingly succeeds and is hereby allowed. The impugned order shall stand quashed with a direction to the Assessing Authority to examine the matter once again in the context of the explanation to Sec.28AA of the K.S.T.Act, 1957, and determine the liability afresh after notice to the Transport Company and the consignor/consignee the goods in question. The petitioner is directed to appear before the Respondent on the 13th of July, 1998. No costs.

Sd/-  
JUDGE



Abid/-  
Jan/-